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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,642	01/28/2004	Anthony Atala	105447-2	4621
21125 7590 11/09/2010 NUTTER MCCLENNEN & FISH LLP SEAPORT WEST 155 SEAPORT BOULEVARD BOSTON, MA 02210-2604			EXAMINER FORD, ALLISON M	
			ART UNIT 1651	PAPER NUMBER
			NOTIFICATION DATE 11/09/2010	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Seaport West
155 Seaport Boulevard
Boston, Massachusetts 02210-2604

In re Application of: Anthony Atala et al	:	
Serial No: 10/766,642	:	DECISION
Filed: January 28, 2004	:	ON
Attorney Docket No: 105447-2	:	PETITION
Title: Enhancement Of Angiogenesis To Grafts	:	
Using Cells Engineered To Produce Growth	:	
Factors	:	

This letter is in response to the Petition under 37 CFR 1.181 filed on August 16, 2010.

BACKGROUND

On January 28, 2004 instant application was filed.

On January 27, 2005, a FOAM was issued. Examiner made a telephonic restriction with Mr. Engellenner on January 4, 2005 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-13 and 23-29. The examiner presented the following groups:

Group I. Claims 1-13 and 23-29, drawn to a method of organ augmentation

Group II. Claims 14-22 and 30-32, drawn to a method of tissue repair

On July 27, 2005, a response was filed. Applicant confirmed the election with traverse but did not distinctly and specifically point out the supposed errors in the restriction requirement.

On September 20, 2005, a final Office action was mailed. Page 2, under election/restriction, examiner states: "Applicant's election of Group I, claims 1-13 and 23-29, in the reply filed on July 27 2005 is acknowledged. Because applicant didn't distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP 818.03(a)). The restriction was made Final."

Three RCEs have been filed on March 22, 2006, July 16, 2007 and September 15, 2008 respectively.

On January 4, 2010, a response was filed in response to non-final Office action dated September 2, 2009. New claims 38-43 were added.

On March 30, 2010, a Final action was mailed. Examiner withdrew the newly added claims 38-43 as they are drawn to different invention.

On June 30, 2010, an amendment after final was filed.

On July 13, 2010, Advisory action was mailed. Examiner maintained the final rejection.

On August 16, 2010, the present petition was filed requesting reconsideration and withdrawal of the restriction requirement and the premature "final" rejection as maintained in the Advisory action dated July 15, 2010.

DISCUSSION

The prosecution history and petition have been carefully reviewed.

37CFR 1.181(f) states:

"Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable."

The Final Office action was mailed on March 30, 2010. The instant petition was filed on August 16, 2010. Therefore, the petition is untimely.

DECISION

The petition is **Dismissed** for the reasons set forth above.

The application is being forwarded to examiner for further action after mailing of this decision. Applicant may consider filing a petition on reconsideration of restriction under 37 CFR 1.144. In addition, applicant's attention is invited to 37 CFR 1.181(f), it states: "The mere filing of a petition will not stay any period for reply that may be running against, nor act as a stay of other proceedings. "

Should there be any questions about this decision, please contact Supervisory Patent examiner Cecilia Tsang, by letter addressed to Director, Technology Center 1600, at the address listed above, or by telephone at 571-272-0562 or by facsimile sent to the general Office facsimile number, 571-273-8300.


Jacqueline Stone

Director, Technology Center 1600